



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
LANSING

MARIANNE UDOW
DIRECTOR

May 1, 2007

Carol Morey Viventi
Secretary of the Senate
Michigan State Senate
State Capitol Building, Room S5
Lansing, MI 48913

Rich Brown
Clerk of the House
Michigan House of Representatives
State Capitol Building
Lansing, MI 48913

Dear Secretary Viventi and Mr. Brown:

Public Acts 28 and 29 require the Department of Human Services (DHS) and the Department of Community Health (DCH) to provide written reports to the legislature regarding expanded criminal background check requirements. DHS has regulatory authority of homes for the aged by executive order. This report therefore includes information regarding homes for the aged regulated under PA 368, in addition to adult foster care regulated under PA 218, but does not include information regarding facilities/agencies regulated by DCH.

If you have any questions about the attached material, please contact John Sorbet, Chief Administrative Officer, at 373-7787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marianne Udow".

Marianne Udow

Attachments



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
OFFICE OF CHILDREN AND ADULT LICENSING



MARIANNE UDOW
DIRECTOR

**MICHIGAN LONG-TERM CARE WORKFORCE
BACKGROUND CHECK LEGISLATION
REPORT TO THE LEGISLATURE
April 2007**

Submitted by

**Michigan Department of Human Services
Office of Children and Adult Licensing
Division of Adult Foster Care & Home for the Aged Licensing**

EXECUTIVE SUMMARY

PURPOSE: Public Acts 28 and 29 require effective April 1, 2006, new employees, individuals seeking clinical privileges, and independent contractors with direct access to or providing direct services to residents in facilities regulated by these acts are required to submit their fingerprints for criminal records and criminal history checks through the Michigan State Police and FBI. These statutes prohibit an adult foster care facility, a home for the aged, or other health facilities and agencies from employing, independently contracting with or granting clinical privileges to an individual convicted of criminal offenses specified in the acts.

Included in these acts are requirements for the Department of Human Services (DHS) and the Department of Community Health (DCH) to provide written reports to the Legislature regarding this expanded criminal background check requirement. DHS has regulatory authority of homes for the aged by executive order. This report therefore includes information regarding homes for the aged regulated under PA 368, in addition to adult foster care regulated under PA 218, but does not include information regarding facilities/agencies regulated by DCH.

REPORTING REQUIREMENTS of 1979 PA 218 and 1978 PA 368:

Section 734b(15) and section 20173a(13):

Within 1 year after the effective date of the amendatory act that added this section, the department shall submit a written report to the legislature regarding each of the following:

- (a) The impact and effectiveness of this amendatory act.
- (b) The feasibility of implementing criminal history checks on volunteers who work in the adult foster care and home for the aged facilities and on state agency employees who are involved in the licensing of the adult foster care and home for the aged facilities and regulation of the employees.
- (c) The amount of federal funds provided to implement a pilot program for national and state criminal history checks on direct access employees of long-term care facilities or providers, the amount of those funds expended to date, and the amount of those funds remaining.

Section 734c(2) and section 20173b(2):

One year after the effective date of this section and each year thereafter for the next 3 years, the department shall provide the legislature with a written report regarding the appeals process implemented under the section for employees subject to criminal history checks. The report shall include, but is not limited to, for the immediately preceding year the number of applications for appeal received, the number of inaccuracies found and appeals granted with regard to the criminal history checks conducted under section 34b/73a, the average number of days necessary to complete the appeals process for each appeal, and the number of appeals rejected without a hearing and a brief explanation of the denial.

DHS REQUESTS:

- 1. Continuation of this initiative to protect vulnerable adults in DHS regulated facilities by eliminating facility employees with specified criminal backgrounds.
- 2. Funding through DCH to support the infrastructure needed to support continuation of this initiative, including the funding of two DHS analysts. The DCH report contains the projected budget requirements for this initiative.

Report to the Legislature

I.

(a) Impact and effectiveness of this amendatory act:

4/1/06-4/10/07 the following background checks were processed for AFC & HFA:

45,442	Employment applications processed by the LTC Workforce website
1232	Registry ¹ matches disqualified individuals from employment (savings of \$86,240)
21,734	Individuals fingerprinted
4,550	FBI and MSP criminal records processed by DHS analysts
352	Individuals disqualified from employment due to their criminal record: 185 by MSP LEIN report: 85 by FBI report: 82 by both LEIN & FBI.
38	Appeals received; 13 inaccuracies and 8 expunged/set asides approved
455	Rapbacks ² received by analysts; 4 individuals disqualified from continued employment for subsequent convictions
16,104	Individuals hired that were cleared through the system
2,603	Public contacts received/answered by 2 full-time DHS analysts

Effect of Changing the Statutory Requirements:

Among the changes to both the Public Health Code and the Adult Foster Care Facilities Act is use of additional registries to uncover disqualifying information about individual applicants. This has resulted in 1,232 individuals being disqualified.

Previous requirements only provided for a fingerprinted FBI record check if an individual had not been a resident of Michigan for 3 years. Matching all applicants with the FBI criminal database has resulted in 85 individuals being disqualified. An additional 82 were disqualified for crimes included on both the FBI and Michigan criminal history databases.

These new requirements provide for fines and confinement for both the licensee and the applicant for failure to comply. This new provision should provide an additional incentive for licensees to comply.

The previous requirements had no provisions for tracking subsequent convictions. The current fingerprinting requirements allows for notification of subsequent crimes as a result of the Michigan State Police Rapback system. This has resulted in the department

¹ Michigan Public Sex Offender Registry, U.S. Health and Human Services Medicare/Medicaid Exclusion List, ICHAT, Michigan Certified Nurses Aide Registry, and Offender Tracking Information System.

² A system maintained by the MSP that provides automatic notification of subsequent criminal charges to the department.

receiving 455 Rapbacks for individuals who have committed subsequent crimes. Four of these individuals were disqualified from continued employment as a result of this notification.

The previous criminal background check screening process had no appeal process. Current law provides for an appeal of inaccurate records, set-asides and expunctions. DHS has granted 13 appeals for inaccurate records and 8 appeals for records that had been expunged or set-aside. Many inaccurate records are the result of local units of government's failure to report changes in dispositions to LEIN.

It should be noted that the Michigan Long-term Care Workforce Back Ground Check Legislative Advisory Subcommittee continues to have strong support and interest in implementing a broader appeals process to take into consideration mitigating circumstances and rehabilitation. This subcommittee of community stakeholders has recommended that some of the previously submitted appeals language be reconsidered. It has been suggested that the current process has had an unintentional impact of excluding qualified individuals from being employed in long-term care. An expanded appeals process could assess mitigating circumstances and rehabilitation, as well as potential risk to residents. The department suggests consideration of the data to determine whether the previous appeals language is necessary and/or desirable. A survey of employers could provide valuable input into evaluating the impact this process has had on the pool of qualified applicants.

To fully understand the impact background checks have on the protection of vulnerable adults will require additional time for a comparative analysis. We now have baseline data upon which subsequent statistics can be compared to evaluate if the process has resulted in a reduction in resident abuse, neglect and financial exploitation.

The Adult Abuse and Neglect Prevention Training portion of the grant provided 233 free trainings to 3,888 direct access staff as of February 15, 2007. The goal is to train a total of 8,000 statewide by the end of the grant period. This comprehensive training program was developed through the Michigan Office of Services to the Aging in cooperation with BEAM and Michigan State University College of Human Medicine. The training provides valuable skills and information to help direct access staff:

- Recognize vulnerable adult abuse, neglect and misappropriation of funds;
- Know how and to whom to report abuse; and
- Implement practical tools to prevent such abuse.

The impact of this training will need to be taken into consideration when assessing the effectiveness of the new background check process as it is likely to result in an increase in the number of abuse complaints received.

Fiscal Impact on the State: A complete report of the background check program costs and projected budget (including funding to cover DHS program needs) is contained in the DCH Michigan Workforce Background Check Program Report to the Legislature.

DHS Analysts Positions: As the fiduciary of the grant, DCH provided funding for the hiring of two full-time background check analyst positions for DHS, from 4/1/06 through 9/30/07. Annual costs for the two analyst positions total \$172,800, including benefits. Continued Funding for these positions is included in the DCH Michigan Workforce Background Check Program Report to the Legislature.

Analyst work processed 4/1/06 through 4/10/07:

4,550	Criminal background records received and processed (new hires)
352	Individuals determined to be disqualified from employment
40	Appeals received and reviewed; 22 denied, 18 granted
2,603	Phone calls and emails received and answered
455	Rapbacks reviewed and received on individuals with subsequent crimes
4	People disqualified from employment due to rapback convictions

Note: Conservatively, between now and 4/1/08, at least 23,235 “exempt employees” (grandfathered) will be processed through this same system in addition to the new hires (37,308 first year), based on current statutory requirements.

Criminal Record Checks: Current state law requires the department to pay or reimburse with federal funds to implement the pilot program and prohibits the adult foster care/home for the aged facility from seeking reimbursement from the individual who is the subject of the initial criminal history check. At the present time, Medicaid match funds accessed through DCH cover a portion of the costs not covered by the grant.

A decision needs to be made to determine how the costs not covered by the Medicaid/Medicare match will be provided, once the grant ends September 30, 2007. If the state chooses to pass-on those costs to the licensees, it will create an additional financial burden on all long-term care facilities. Facilities that accept low-income residents could be impacted more than others.

Since 4/1/06, 21,734 new hires were fingerprinted at \$70 each (FBI & MSP check), at a cost of \$1,521,380. It is projected this number of employees will undergo criminal background checks annually. In addition, to comply with current requirements, a conservative estimate of 23,235 employees hired prior to 4/1/06 will need to be fingerprinted by 4/1/08, at \$46 each (MSP LEIN only) costing approximately \$1,068,810.

Suggestions for Curtailing Costs:

Current statute requires a fingerprint background check each time an individual changes employers. This now could be eliminated with the automated notification system in place referred to as Rapback. For all employees that have their fingerprints on file with the MSP, notification of subsequent criminal charges is automatic. Licensees/employers should, however, be required to enter new hire information into the database in order to track an individual's current employer in the event there is a subsequent criminal charge for conviction. However, there still may be the need for subsequent fingerprinting of employees who have had a break in employment.

400.734b and 333.20173a require adult foster care and home for the aged facilities to complete criminal background checks on persons they employ, contract with or grant clinical privileges. 333.20173a also requires hospice and home health agencies to complete criminal background checks on their employees or persons they independently contract. Therefore, people who work for hospice and home health agencies that work under contract in adult foster care and home for the aged facilities are required to have multiple background checks. If adult foster care and home for the aged facilities had a means to confirm hospice and home health agency staff had completed background checks, it would reduce the need for multiple background checks be completed.

Similarly, the current requirement for fingerprint background checks for independent contractors who regularly have direct access to or provide direct services to residents has created an unforeseen problem with temporary staffing agencies. AFC and HFA facilities often contract with staffing agencies for the provision of temporary staff. These temporary staff may have "regular direct access to or provide direct services to residents" for a period of time. However, these temporary staff may be working in multiple facilities, or work in multiple facilities over a period of time. Repeatedly conducting background checks on these staff is not cost effective or necessary. It is recommended that temporary staffing agencies be given access to the LTC Workforce Background Check website, be provided legislative authority to process background checks on their employees, and an allowance for regulated facilities to confirm the background checks have been completed.

(b) The feasibility of implementing criminal history checks on volunteers and state employees:

1. Volunteers in adult foster care and homes for the aged facilities:

Currently, adult foster care and home for the aged volunteers are not being required to have background checks unless they have been granted clinical privileges in a home for the aged.

On 3/1/07, a LTC Workforce website questionnaire was sent to over 3200 facilities/agencies registered on the system. For purposes of this survey, "volunteer"

referred to those volunteers who have “direct access or provide direct services to patients or residents’ on an on-going basis, and would not apply to individuals volunteering on a one time or time limited basis. Of the 12% that responded, 46.4% of the AFC’s and 90.5% of the HFA’s reported using volunteers in their facilities; 63% reported utilizing volunteers in “direct access” positions; over 75% felt volunteers were critical to the provision of services to residents; 53.5% felt a law requiring background checks would significantly impact the number of their volunteers, though many reported already completing some kind of background checks on their volunteers.

Though DHS has no data that suggests volunteers have been involved in abuse in our regulated facilities, background checks may be prudent for those volunteers that serve in the same capacity as paid employees with direct access to residents.

2. State agency employees who are involved in the licensing of the adult foster care/home for the aged facilities and regulation of the employees:

AFSCME has filed a grievance on behalf of School for the Deaf employees concerning the fact that the Civil Service Commission, not the legislature, covers “civil servants”.

DHS currently has a personnel policy in place that requires the fingerprinting of all new state employees hired by the department.

(c) Federal Grant funds (According to DCH report):

1. Federal grant awarded to DCH to implement the pilot program - 3.5 million.
2. Total expenditure as of 9/30/6 - 2,167,700.
3. Balance carried over to FY 2007 - 1,085,300.
4. Projected grant balance as of 9/30/07 - 0

II.

The Appeals Process for (4/1/06-3/1/07):

38 Applications for appeal received

29 Inaccuracy appeals received

9 Set-aside/expunction appeals received

21 Appeals granted

11 - Average number of days to complete the appeals process: 17 within a week: 24 within 2 weeks. Those taking an extended period of time were due to DHS waiting for the applicant to provide requested documentation.

17 - Appeals rejected without hearing. All individuals with denied appeals were informed in writing of their right to an appeal conducted as a contested case hearing. None requested.

Denial determinations were based on the applicants' inability to produce documents that substantiated their claim that their record was inaccurate, had been set-aside or expunged.